

APPEAL NO. 040555
FILED APRIL 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 10 and continued on February 12, 2004, with the record closing on that day. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 11th quarter. The appellant (carrier) appealed the hearing officer's decision. The claimant responded, urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

At issue in this case is whether the claimant showed that his underemployment was the direct result of the impairment from his compensable injury effects and whether the claimant made a good faith effort to obtain employment commensurate with his physical ability to work. Entitlement to SIBs is determined based upon whether the employee met the requirements during the qualifying period preceding the compensable quarter. Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant set up his own company for residential water treatment equipment installation and repair. His preinjury employment was in the commercial aspect of that industry. The carrier contends that the claimant's underemployment during the qualifying period is not a direct result of his impairment from the compensable injury, but is because he failed to demonstrate what a "reasonable person" would believe were his best efforts to run his self-employed business.

Section 408.142(a)(2) and (4) provide, in pertinent part, that an employee is entitled to SIBs if his or her unemployment or underemployment is a direct result of the impairment with lasting effects and the claimant made a good faith effort to obtain employment commensurate with his or her physical ability to work. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996; Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; *and see* Rules 130.101, *et seq.* No minimum hours are required and the determination of what ability a claimant has and whether the employment is relatively equal to his or her ability are fact questions for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. Texas Workers' Compensation Commission Appeal No. 020103, decided February 27, 2002. As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. Although there was conflicting evidence, nothing in our review of the record indicates that the hearing officer's findings are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

For the above reasons, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ARGONAUT-SOUTHWEST INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH A. YURKOVICH
1431 GREENWAY DRIVE, SUITE 450
IRVING, TEXAS 75038.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge